

1 CRAIG K. PERRY, Esq.
2 Nevada State Bar No.: 3786
3 CRAIG K. PERRY & ASSOCIATES
4 7795 West Sahara Avenue, Suite 101
5 Las Vegas, NV 89117
6 Phone: (702) 228-4777
7 Fax: (702) 943-7520
8 craig@craigperry.com

Attorneys for Plaintiff
Kirby Spencer

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 KIRBY SPENCER,)	CASE NO.: 2:12-cv-01317-JCM-PAL
)	
12 Plaintiff,)	
13 vs.)	
)	
14 DIVERSIFIED ADJUSTMENT SERVICE, INC.)	REPLY TO DEFENDANTS'
)	OPPOSITION TO PLAINTIFF'S
15 Defendant.)	MOTION FOR SUMMARY
)	JUDGMENT
16)	
17)	
18)	

19 **REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION**
20 **FOR SUMMARY JUDGMENT**

21 Comes now Plaintiff, Kirby Spencer by and through his attorney of record, Craig K.
22 Perry, Esq. of Craig K. Perry & Associates and hereby submits its reply to Defendant
23 Diversified Adjustment Service, Inc.'s Opposition to Plaintiff's Motion For Summary
24 Judgment.

25 This reply is based on the attached points and authorities, the papers and records
26 on file with the court, and such oral and documentary as may be presented at the time of
27 these motions.

28 ///

POINTS AND AUTHORITIES

Counsel for Plaintiff is making his first appearance on this case today, having just being retained today to take over the handling of this and other aspects of this case.

Prior to this point, the Plaintiff has been operating in proper person, and has clearly missed some of the court-imposed deadlines. Counsel for Plaintiff acknowledges that Plaintiff's filing of his motion was not timely. Plaintiff's counsel will be seeking to extend the time for discovery on the basis of excusable neglect, pursuant to LR 6-1(b), in the near future.

Plaintiff's counsel sought for a continuance to answer this opposition by stipulation of the parties. Unfortunately, opposing counsel were contacted and all are out of the office until after Memorial Day.

Attached is documentary evidence of the violations of 47 U.S.C § 227(b)(1)(B). Access to this information was made available to Defense counsel as early as February 2013. This applicable portion of this law prohibits a person within the United States to "initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior written consent of the called party[.]"

Please see attached Exhibits in support of this. There are screen shots of calls from the Defendant's phone, a screen shot of the voice messages indicating they are in fact robocalls. They demonstrate repeated attempts by the Defendant to contact this Plaintiff's phone in violation of Section 227(b)(1)(B). Counsel also has audio recordings of

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1 these calls that will be filed in support of Plaintiff's motion, which we are attempting to file
2 today at the courthouse since they are not documents.

3 DATED this 23rd day of May, 2013.

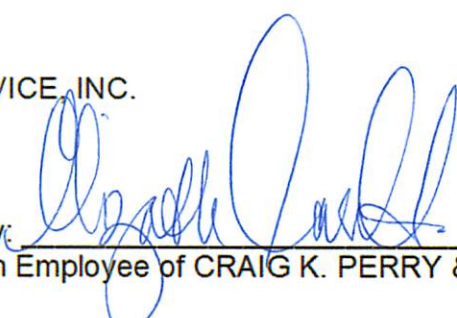
4 CRAIG K. PERRY & ASSOCIATES

5
6
7 By: /s/ Craig K. Perry
8 CRAIG K. PERRY, Esq.
9 State Bar No 3786
10 7795 West Sahara Avenue, Suite 101
11 Las Vegas, Nevada 89117
12 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of CRAIG K. PERRY & ASSOCIATES and that on this 23rd day of May, 2013, I did cause a true copy Of the foregoing REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT to be placed in the United States Mail., with First class postage prepaid thereon, and addressed as follows:

Jerry S. Busby, Esq.
jbusby@cooperlevenson.com
Gregory A. Kraemer, Esq.
Gkraemer@cooperlevenson.com
COOPER LEVENSON APRIL
NIEDELMAN & WAGENHEIM, P.A.
6060 Elton Avenue, Suite A
Las Vegas, Nevada 89107
Attorneys for Defendants
DIVERSIFIED ADJUSTMENT SERVICE, INC.

By: 
An Employee of CRAIG K. PERRY & ASSOCIATES

Exhibits



Thu, Jan 5, 2012



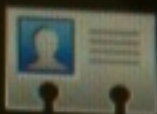
3:44 PM

Verizon Wireless

Clear



Sportacular



People



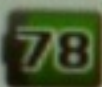
Camera



MLB NEWS



Inte



Gauge Battery Widget

Voltage 3.951V, Temperature 31.2°C

3:42 PM

Notifications



Missed call

8778167215

3:32 PM



Sat, Jan 7, 2012



9:32 AM

Verizon Wireless

Clear



Gauge Battery Widget

Voltage 4.203V, Temperature 26.7°C

9:27 AM

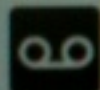
Notifications



Missed call

8778167215

9:01 AM



New voicemail (1)

Dial *86

9:03 AM

Mon, Jan 9, 2012



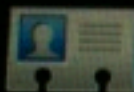
4G



4:32 PM

Verizon Wireless

Clear



People



Phone



Settings



Mobile
Hotspot



Inte



Gauge Battery Widget

Voltage 4.207V, Temperature 27.1°C

4:30 PM

Notifications



Missed call

8778167215

3:32 PM



New voicemail (1)

Dial *86

3:34 PM

Notifications

Quick Settings

Tue, Jan 10, 2012



4G⁺



12:37 PM

Verizon Wireless

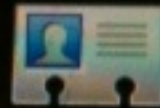
Clear



Shazam



Phone



People



MLB NEWS



Weather

57 Gauge Battery Widget

Voltage 3.776V, Temperature 28.3°C

12:33 PM

Notifications



Missed call

8778167215

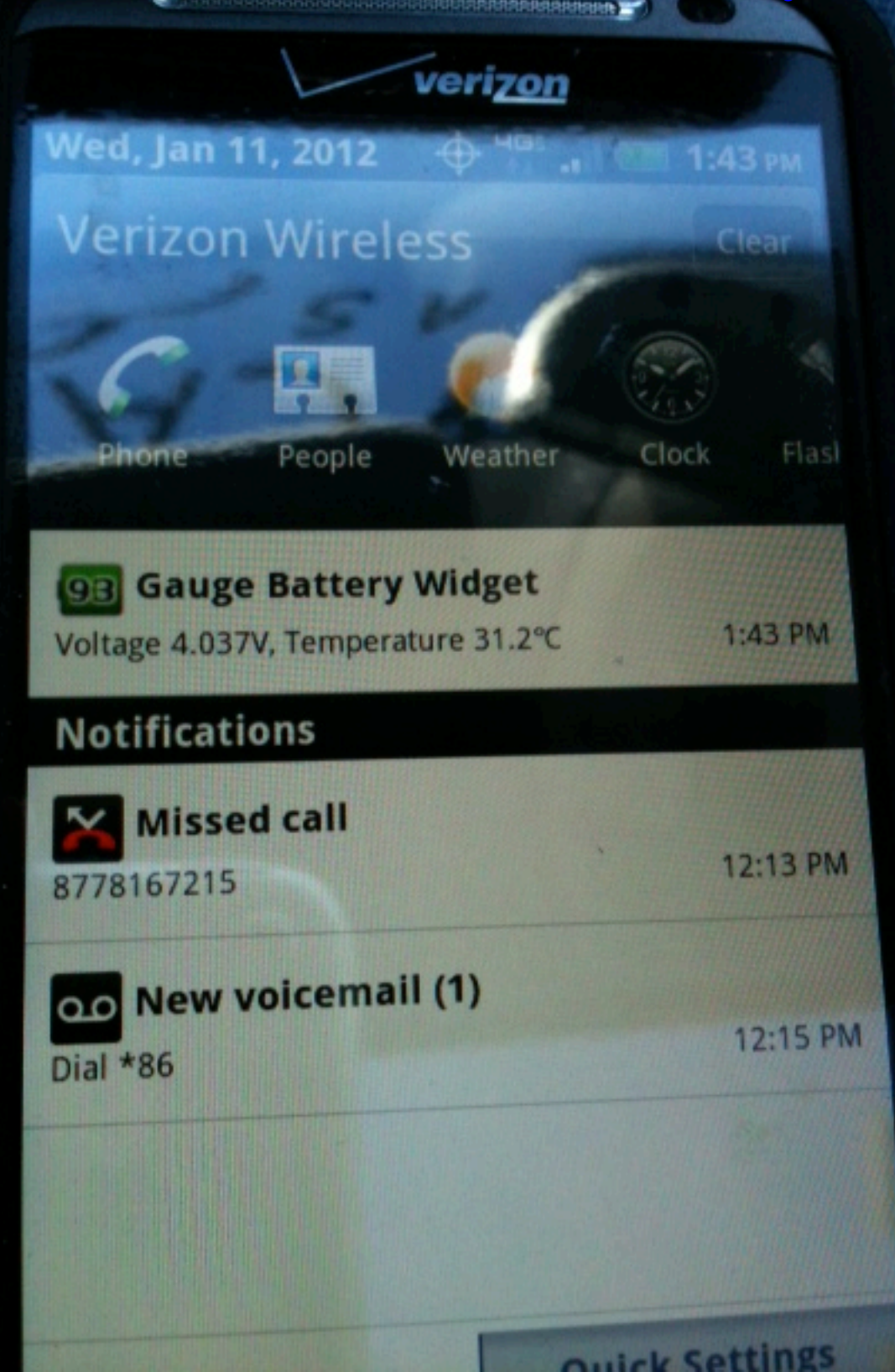
12:31 PM

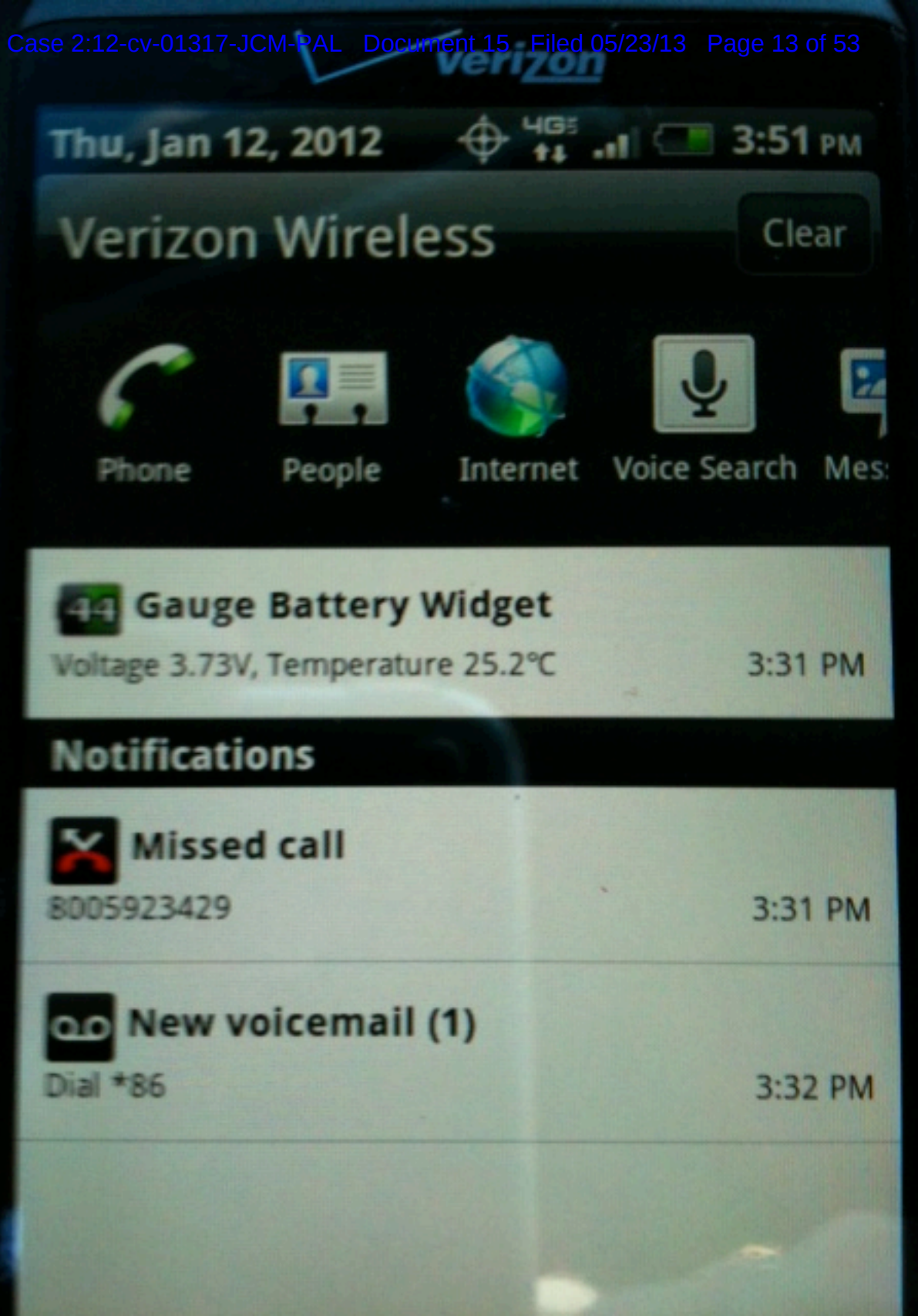


New voicemail (1)

Dial *86

12:32 PM





Fri, Jan 13, 2012



4G LTE



4:51 PM

Verizon Wireless

Clear



Settings



Phone



ScoreCenter



Sportacular



Weather



Gauge Battery Widget

Voltage 4.199V, Temperature 27.3°C

4:45 PM

Notifications



Missed call

8005923429

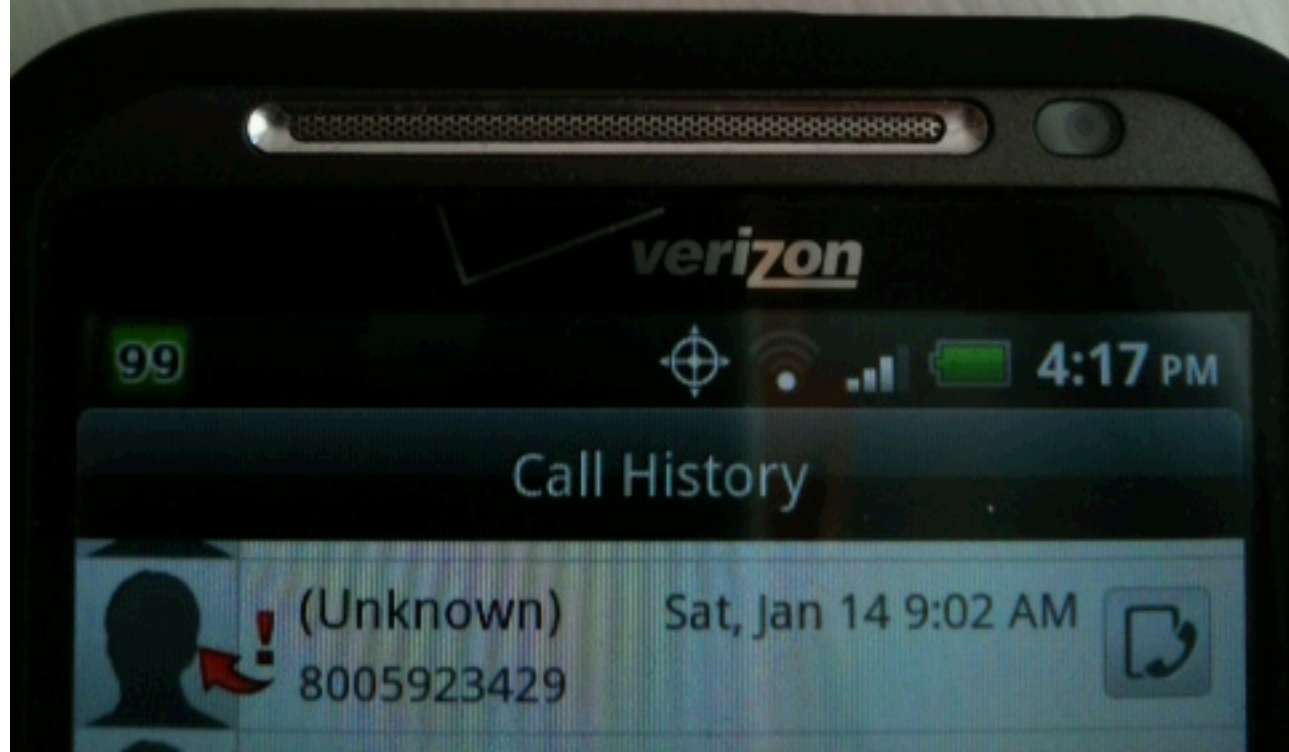
4:21 PM



New voicemail (1)

Dial *86

4:22 PM



Mon, Jan 16, 2012



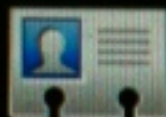
4:12 PM

Verizon Wireless

Clear



Phone



People



Weather



Sportacular

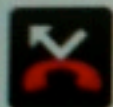


Gauge Battery Widget

Voltage 4.201V, Temperature 27.3°C

4:12 PM

Notifications



Missed call

8005923429

3:39 PM



New voicemail (1)

Dial *86

3:40 PM

Thu, Jan 19, 2012



3:14 PM

Verizon Wireless

Clear



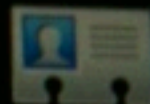
Phone



Spotify



View event



People



msnbc



Gauge Battery Widget

Voltage 4.02V, Temperature 23.6°C

3:12 PM

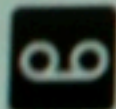
Notifications



Missed call

8005923429

3:07 PM



New voicemail (1)

Dial *86

3:09 PM

Wed, Jan 25, 2012



5:06 PM

Verizon Wireless

Clear



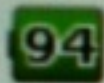
Day



Weather



Camera



Gauge Battery Widget

Voltage 4.203V, Temperature 26.9°C, Charging 5:04 PM

Notifications



Missed call

8005923429

5:01 PM



New voicemail from (800) 592-3429 at 5:01 PM

Google Voice

5:04 PM

Verizon Wireless

3:58 PM

Tue, Jan 31, 2012



Missed call

8005923429 (3:51 PM)



menu



Tue, Jan 31, 2012



4G



3:59 PM

Verizon Wireless

Clear



Shazam



Phone



Weather



Settings



Peo



Gauge Battery Widget

Voltage 3.829V, Temperature 30.9°C

3:57 PM

Notifications



Wi-Fi networks available

Open Wi-Fi networks available



Missed call

8005923429

3:51 PM



New voicemail from (800) 592-3429 at 3:51 PM

Google Voice

3:54 PM

Notifications


Quick Settings



Stop Your Trustee Sale - www.liquidation.com

New voicemail from (800) 592-3429 at 9:02 AM

Inbox x

 Google Voice voice-noreply@google.com

Feb 15 (1 day ago) ☆


to me ▾

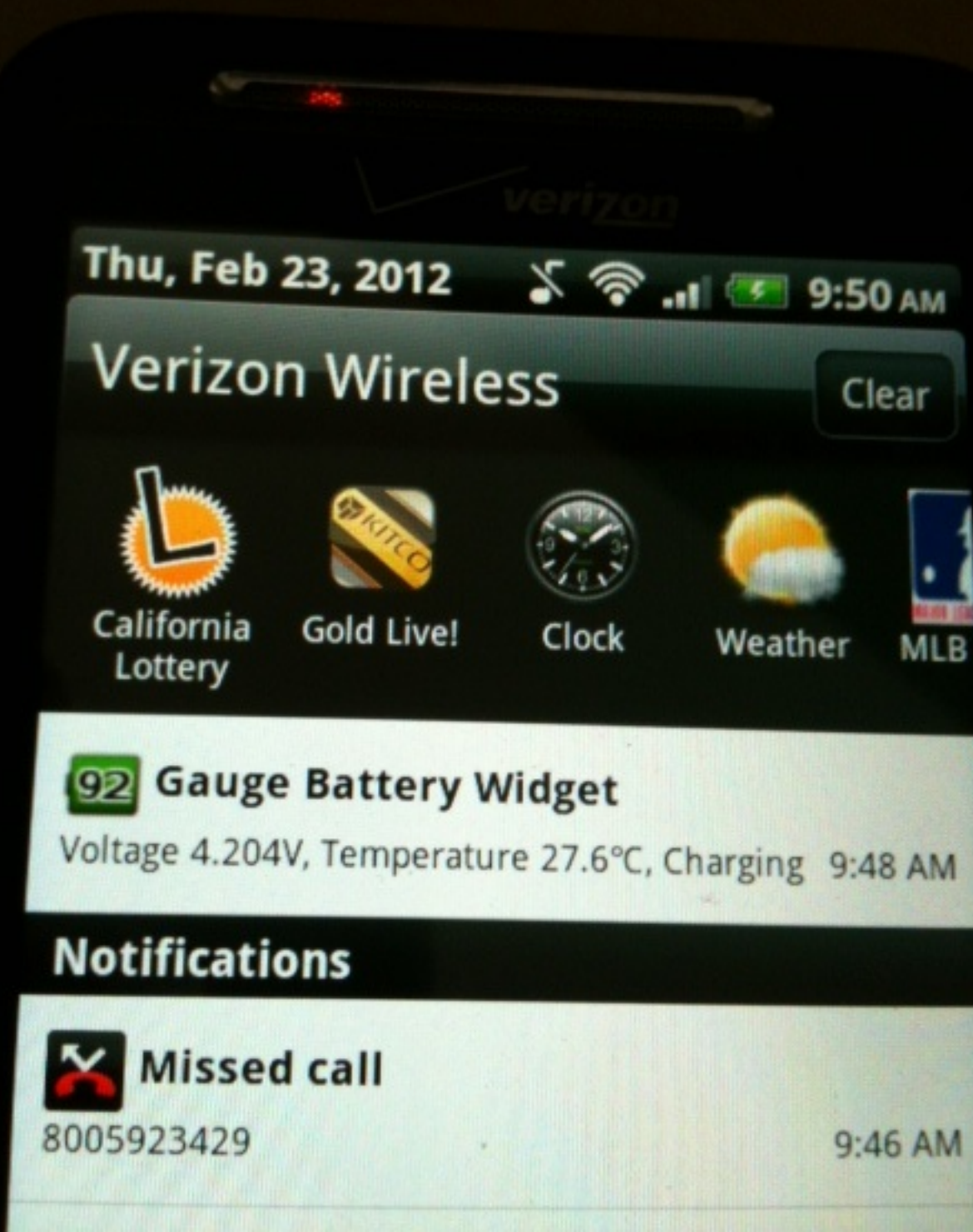
Google voice

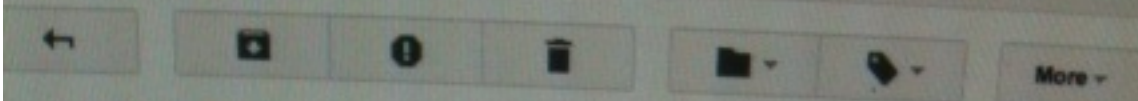
Voicemail from: (800) 592-3429 at 9:02 AM

Yes is a message message for Hey Matthew, Hey, whether be yeah, if we have reached the wrong number. Please call. Hey 800. Yeah 5 92, yeah, 3429 To remove your phone number and then disconnect by continuing to listen to this message, you acknowledge you are. Hey Matthew, yeah. Kirby. Yeah. This message contains I the information. This is diversified adjustment service. We are attempting to collect a debt and any information obtained will be used for that purpose impact our office regarding this important business matter AT; hey 800. Yeah, Hi. 92. Yeah, 3429.


[Play message](#)



 Click here to [Reply](#) or [Forward](#)






AT&T Small Business Phone - att.com/SmallBusiness - Business Phone & High Speed DSL For \$75/mo. 0

New voicemail from (800) 592-3429 at 9:46 AM  Inbox x

**Google Voice** voice-noreply@google.com
to me 


Feb 23 (5 days ago)

VoiceMail from: [\(800\) 592-3429](tel:8005923429) at 9:46 AM



Yes is a message. 6. 4. Your Matthew, yeah. Kirby. Yes, we have reached the wrong number. Please call yeah 800. Yeah fives 92, yeah, 3429 yours, of your phone number and then disconnect by continuing to listen to this message, you acknowledge you are your Matthew, yeah. Kirby. This message contains the information. Yes is diversified adjustment service. We are attempting to collect a debt and any information obtained will be used for that purpose packed our office regarding this important business matter at. Yeah 800. Yeah, H6. 92. Yeah, 3429.

[Play message](#)



Click here to [Reply](#) or [Forward](#)

AT&T Small Business Phone
Business Phone & High Speed DSL For \$75/mo. Get The Special Offer Now!
att.com/SmallBusiness

Ads - Why this ad

82% full
Using 5.9MB left of your 7.1MB free

©2012 Google - Terms & Privacy

Verizon Wireless

5:43 PM

Tue, Feb 28, 2012



Missed call

8005923429 (5:41 PM)



menu



Verizon Wireless



12:36 PM

Fri, Mar 2, 2012



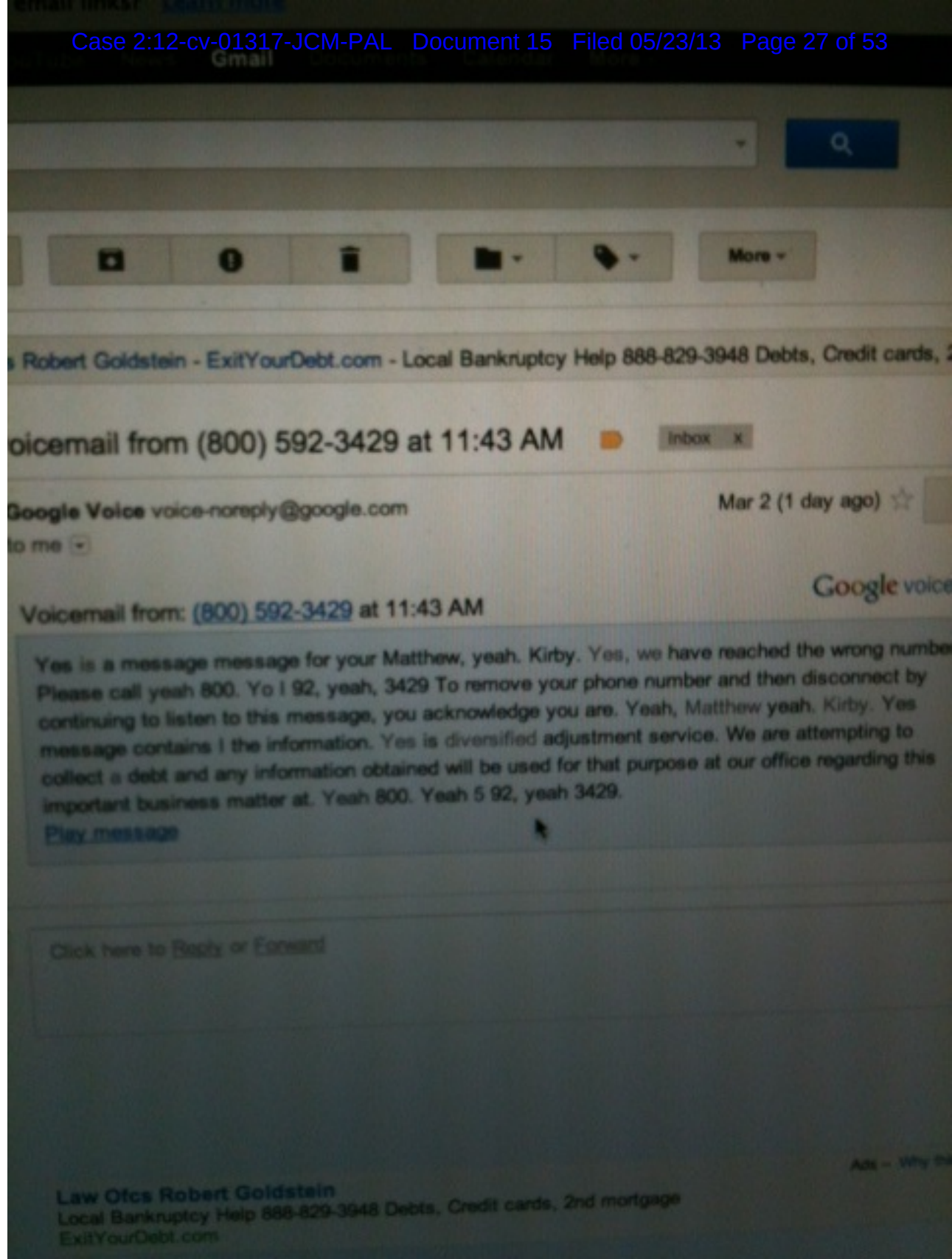
Missed call

8005923429 (11:43 AM)



menu





Fri, Mar 2, 2012



12:27 PM

Verizon Wireless

Clear



Gold Live!



SportingNews



Phone



Baseball
Dictionary



View



Gauge Battery Widget

Voltage 4.099V, Temperature 27.3°C

12:19 PM

Notifications



Missed call

8005923429

11:43 AM



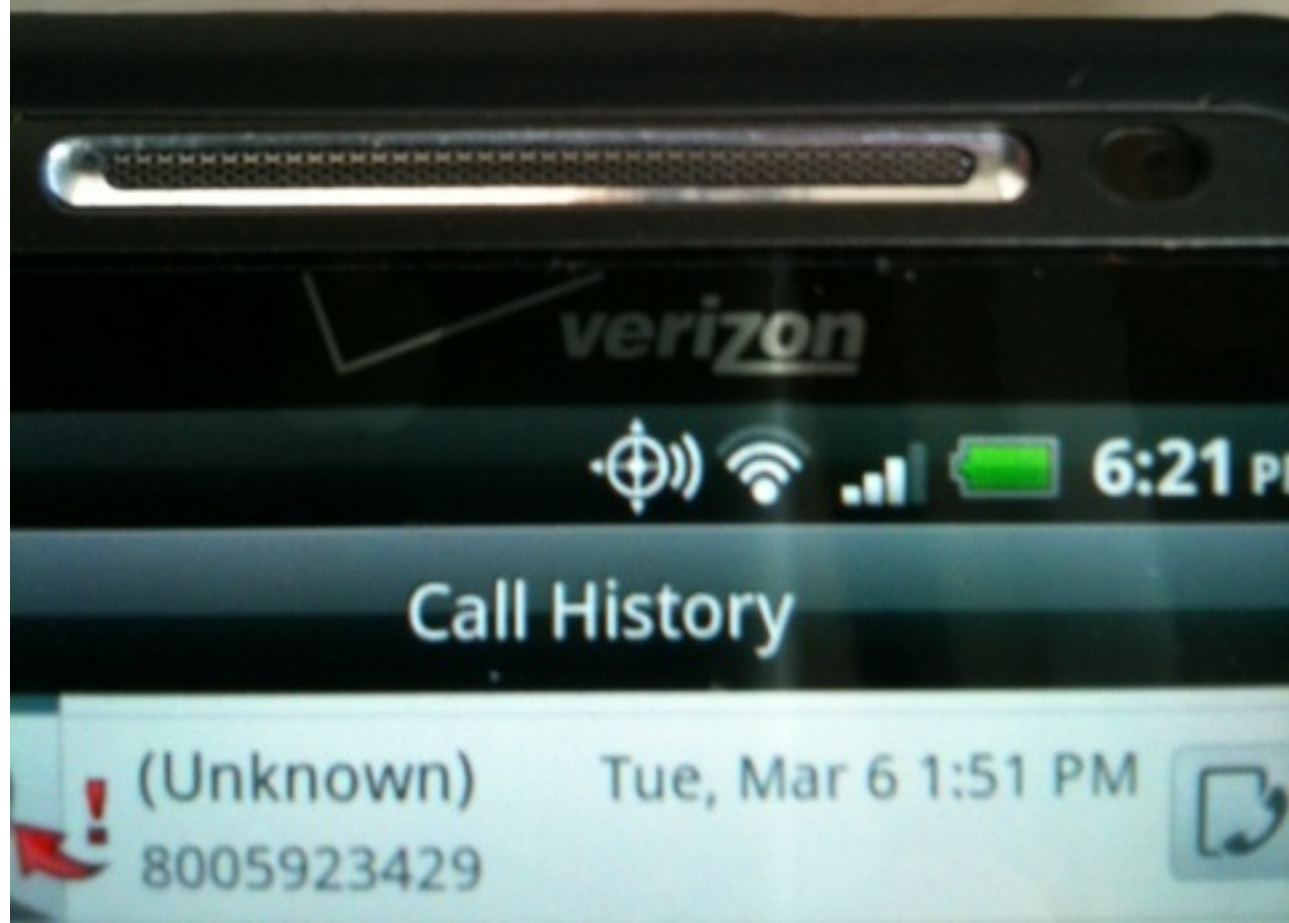
New voicemail from (800) 592-3429 at 1

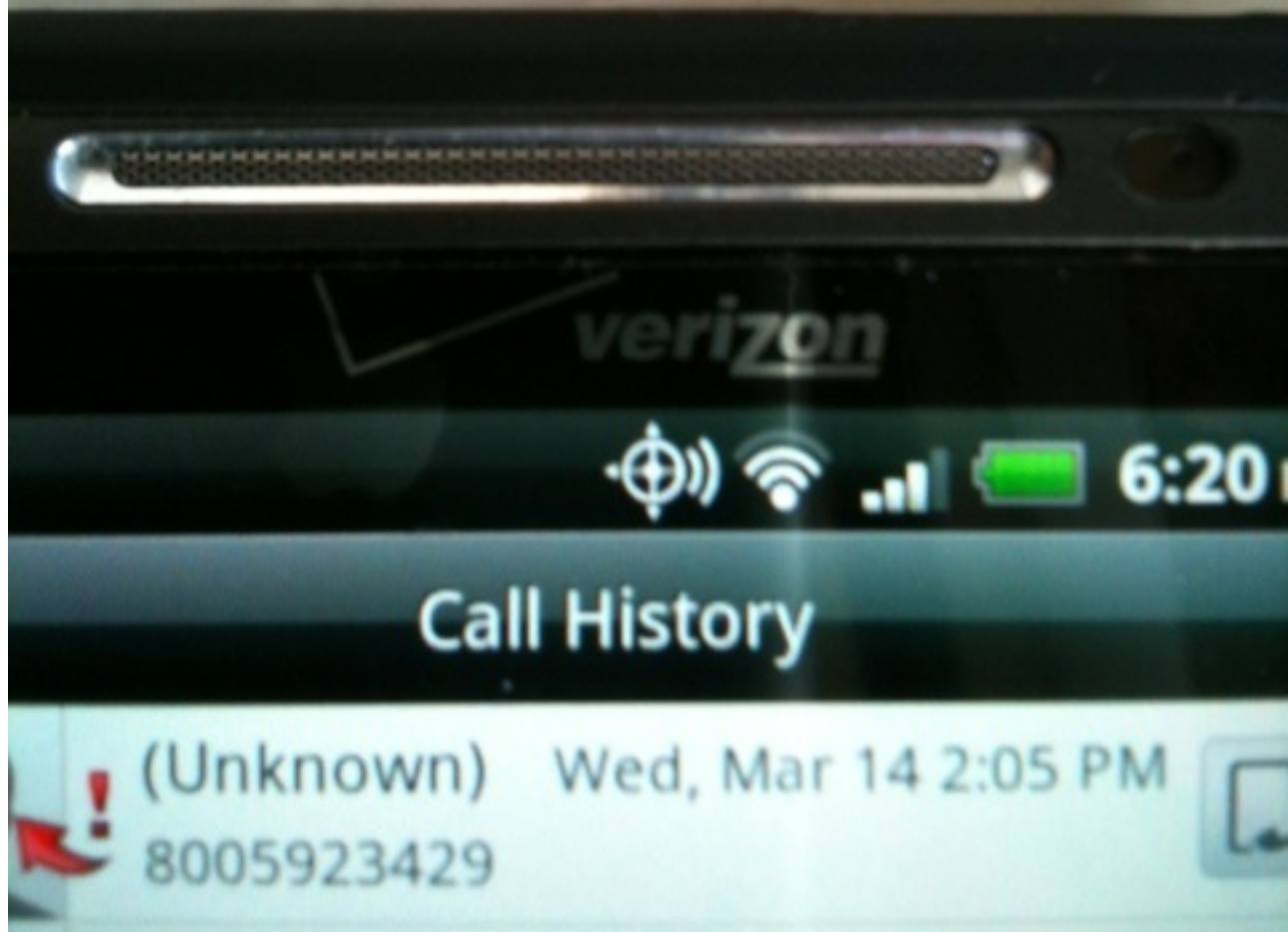
Google Voice

11:46 AM

Notifications

Quick Settings





Verizon Wireless



9:06 AM

Mon, Apr 9, 2012



Missed call

8005923429 (9:03 AM)



MENU



Verizon Wireless

5:52 PM

Wed, Apr 18, 2012

Missed call
8005923429 (5:51 PM)



menu



Verizon Wireless

9:38 AM

Thu, Apr 19, 2012



Missed call

8005923429 (9:34 AM)



menu



Vidyo - www.vsg.com - Natural, Scalable, and Affordable HD Video Conferencing from VSGi

New voicemail from (800) 592-3429 at 9:01 AM

Inbox x



Google Voice voice-noreply@google.com

May 2 (3 days ago) ☆



to me

Voicemail from: (800) 592-3429 at 9:01 AM

Google voice

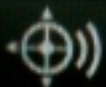
Yes is a message. 6. 4. Your Matthew, yeah. Kirby. Yes, we have reached the wrong number. Please call yeah 800. Yeah by 92. Yeah, 3429 To remove your phone number and then disconnect by continuing to listen to this message, you acknowledge you are your Matthew, yeah. Kirby. Yeah. This message contains 1 the information. Yes is diversified adjustment service. We are attempting to collect a debt and any information obtained will be used for that purpose at our office regarding this important business matter at. Yeah 800. Yeah by 92, yeah 3429 bye bye.

[Play message](#)

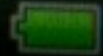


Click here to Reply or Forward

Tue, May 8, 2012



4G⁺



3:56 PM

Verizon Wireless

Clear



Voice



Gauge Battery Widget

Voltage 3.94V, Temperature 27.6°C

3:56 PM

Notifications



Missed call

8005923429

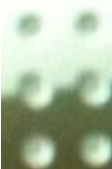
3:50 PM



Voicemail from +18005923429

3:52 PM

Verizon Wireless



3:06 PM

Mon, May 14, 2012



Missed call

8005923429 (3:01 PM)



menu



Tue, May 15, 2012



4G LTE



9:04 AM

Verizon Wireless

Clear



At Bat Lite



Phone



Settings



Clock



View

89

Gauge Battery Widget

Voltage 4.2V, Temperature 24.5°C, Charging

9:03 AM

Notifications



Mattabattacola (Daily Baseball Term)

When a hitter breaks his bat. Started by Chica 9:00 AM



Missed call

8005923429

9:00 AM



Voicemail from +18005923429

9:02 AM

Notifications

Quick Settings

Verizon Wireless

9:01 AM

Tue, May 15, 2012



Missed call

8005923429 (9:00 AM)



menu



Verizon Wireless

10:28 AM

Wed, May 16, 2012



Missed call

8005920230 (9:27 AM)



menu



Thu, May 17, 2012 9:34 AM

Verizon Wireless

Clear



Mail

82 Gauge Battery Widget

Voltage 3.83V, Temperature 34.3°C

9:33 AM



Southwest Airlines

82%




Notifications



Missed call

8005923429

9:01 AM

From:  Google Voice 

New voicemail from (800) 592-3429 at 9:01 AM

Thu, May 17, 2012 9:03 AM

Voicemail from: (800) 592-3429
at 9:01 AM

This is a message for yeah, Matthew.
Yeah, Kirby yeah, if we have reached
the wrong number. Please call. Yeah
800. Yeah by 92. Yeah, 3429 To remove
your phone number and then
disconnect by continuing to listen to
this message, you acknowledge you are
your Matthew, yeah. Kirby. This
message contains I the information.
Yes is diversified adjustment service.
We are attempting to collect a debt and

Mon, May 21, 2012 4G LTE 2:47 PM

Verizon Wireless

Clear



Phone



Weather



Settings



People



Base
Dicti

87 Gauge Battery Widget

Voltage 3.974V, Temperature 25.4°C

2:45 PM

Notifications



Missed call

8005923429

2:44 PM



Voicemail from +18005923429

2:46 PM

Tue, May 22, 2012



4G⁺



9:09 AM

Verizon Wireless

Clear



View event



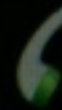
Clock



Flashlight



Settings



Ph



Gauge Battery Widget

Voltage 4.034V, Temperature 31.5°C

9:08 AM

Notifications



salami (Daily Baseball Term)

A grand slam home run.

8:59 AM



Missed call

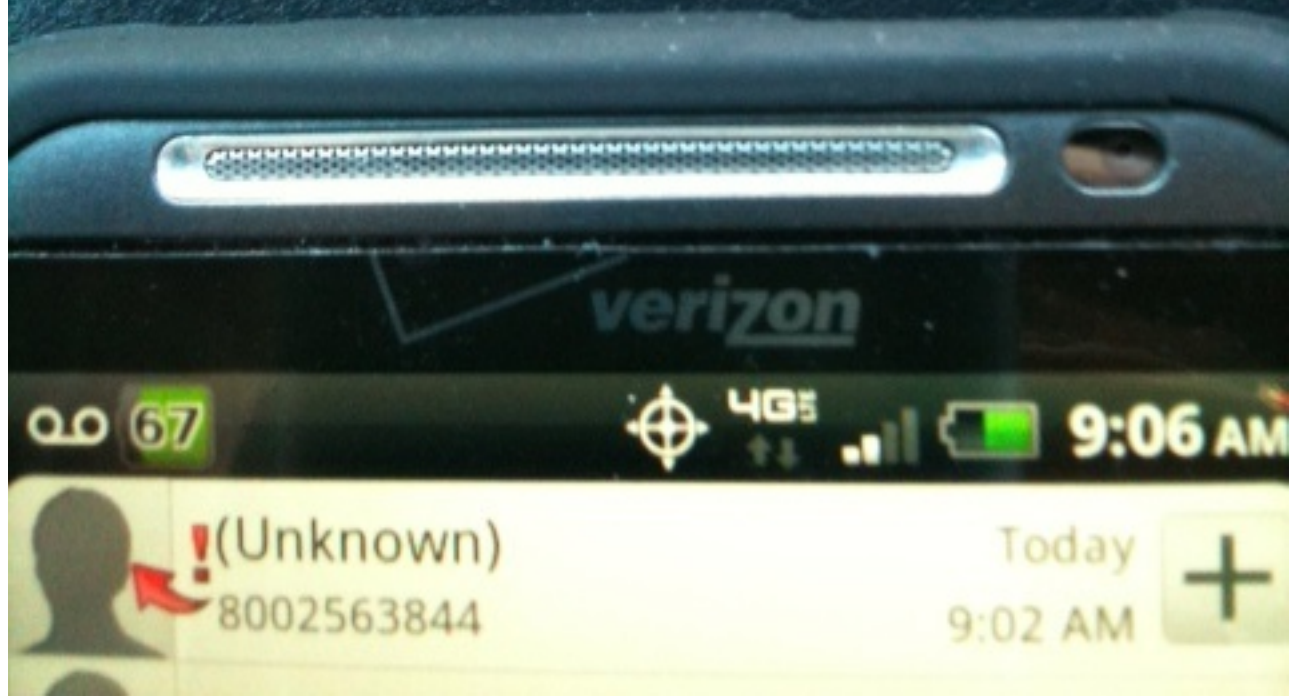
8005923429

9:01 AM



Voicemail from +18005923429

9:06 AM



Fri, Dec 16, 2011



9:05 AM

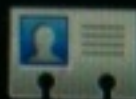
Verizon Wireless



Phone



MLB NEWS



People



Pro Football
Insider



Weather



Gauge Battery Widget

Voltage 3.784V, Temperature 28.8°C

9:05 AM

Notifications



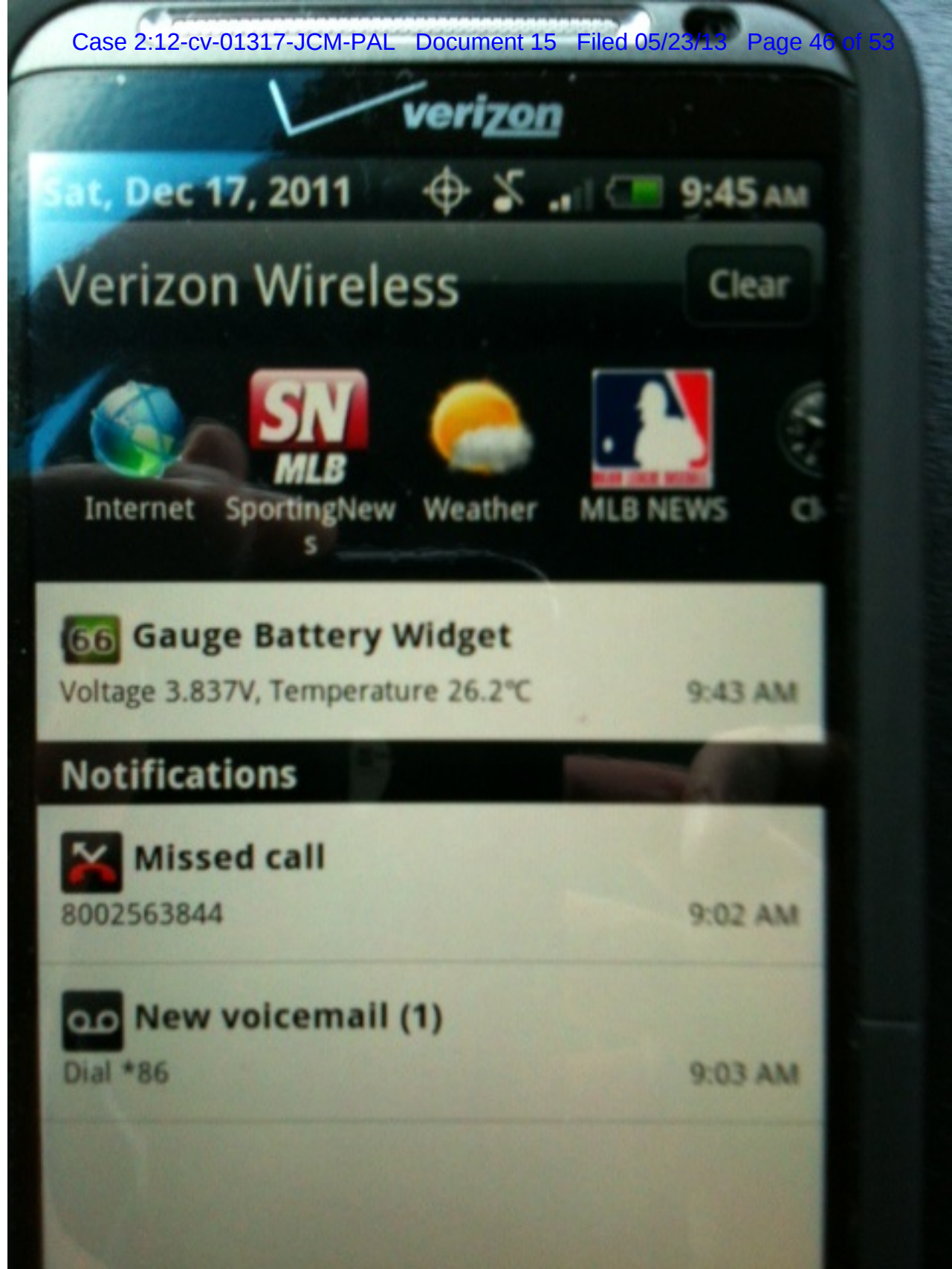
New voicemail (1)

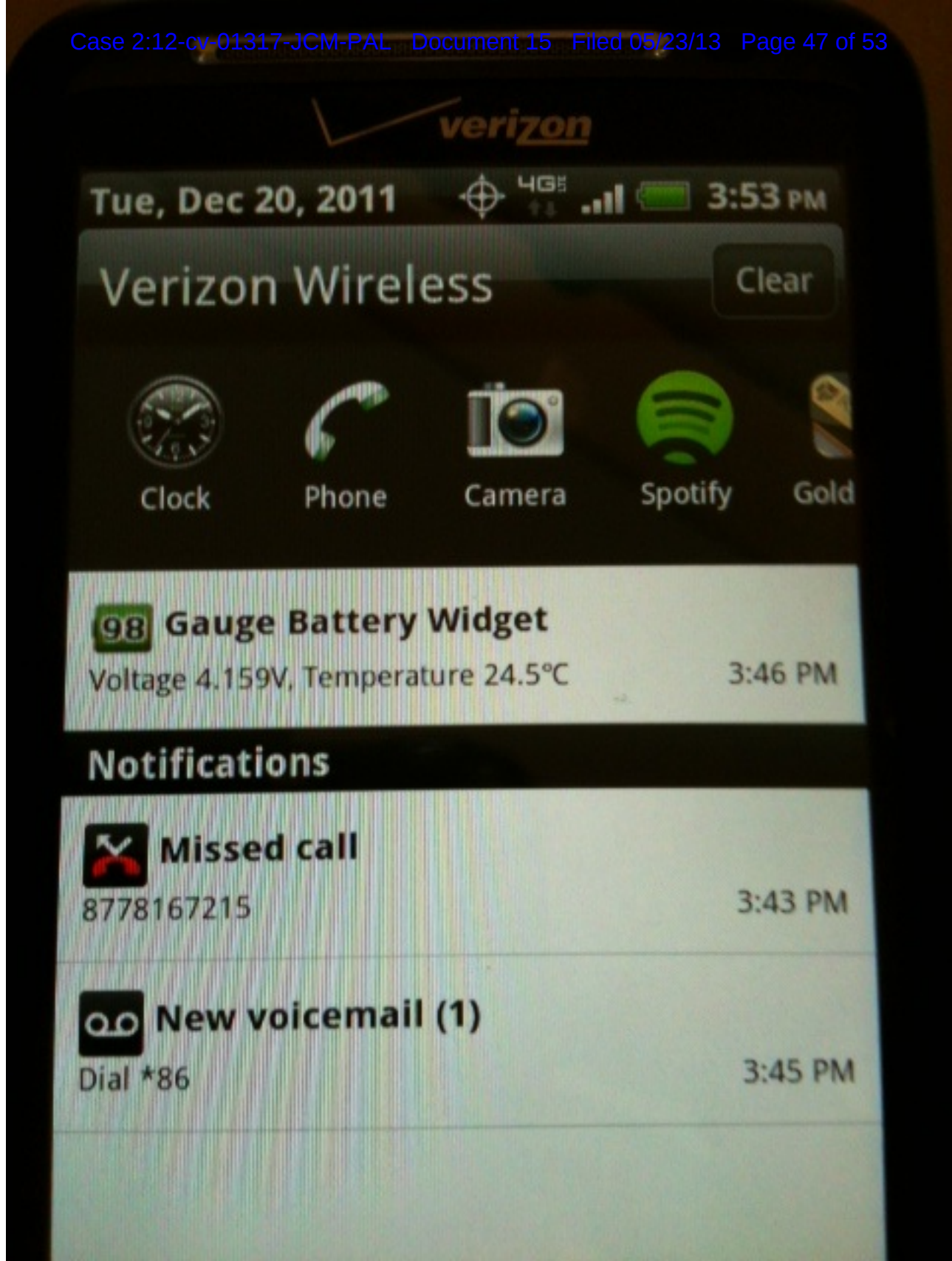
Dial *86

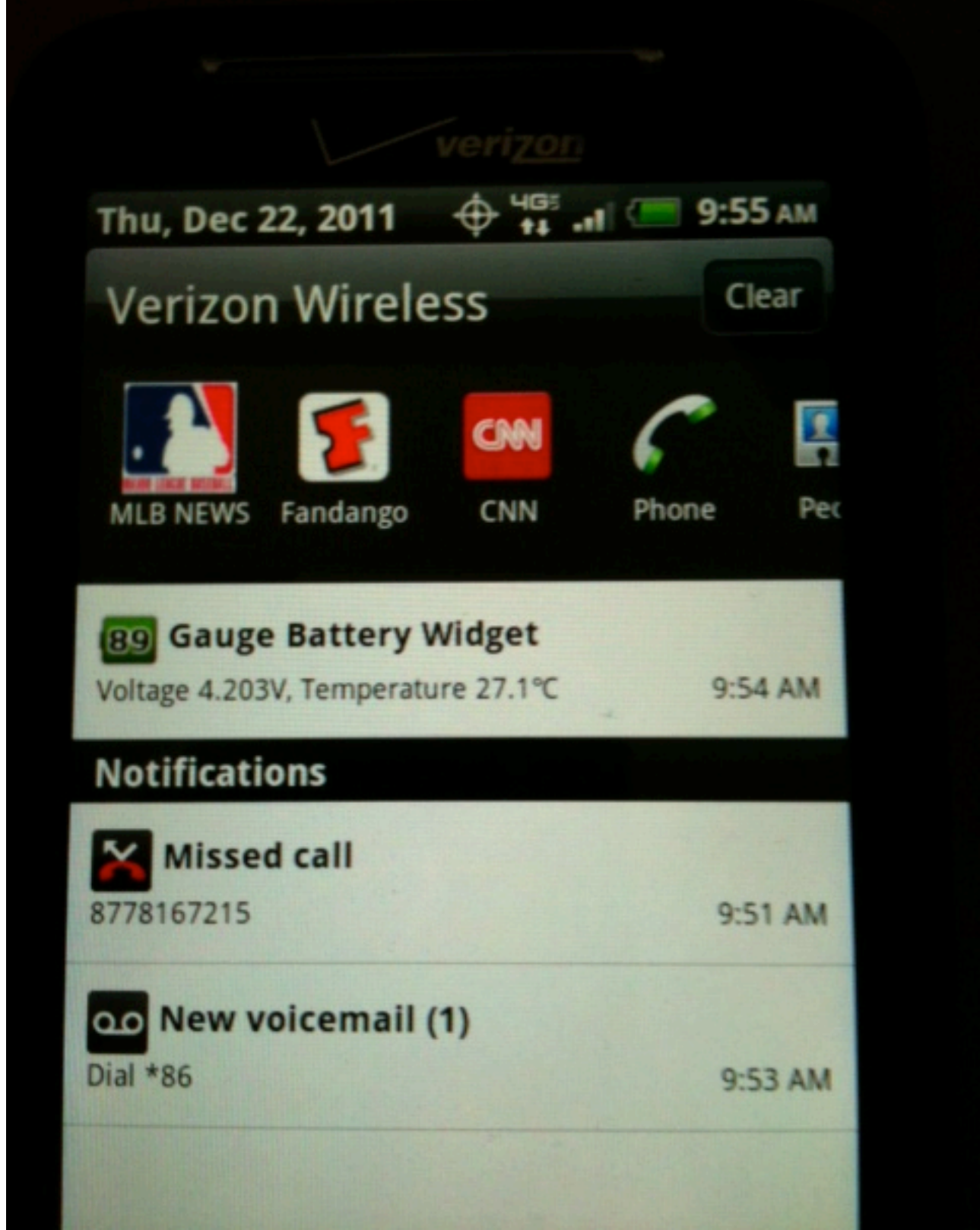
9:04 AM

Notifications

Quick Settings







Fri, Dec 23, 2011



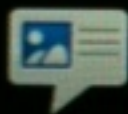
4G



4:41 PM

Verizon Wireless

Clear



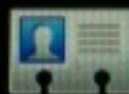
Messages



Shazam



Phone



People



Weather

37

Gauge Battery Widget

Voltage 4.044V, Temperature 30.7°C

4:39 PM

Notifications



Missed call

8778167215

4:36 PM



New voicemail (1)

Dial *86

4:38 PM



Mon, Dec 26, 2011



1X



3:09 PM

Verizon Wireless

Clear



Shazam



Flashlight



Adobe
Reader



Downloads



Sett

85

Gauge Battery Widget

Voltage 4.008V, Temperature 31.2°C

3:08 PM

Notifications



Missed call

8778167215

2:23 PM



New voicemail (1)

Dial *86

2:26 PM

Wed, Dec 28, 2011



3G



12:44 PM

Verizon Wireless

Clear



Phone



Shazam



Sportacular



Pro Football Sporti
Insider



Gauge Battery Widget

Voltage 3.795V, Temperature 29.8°C

12:43 PM

Notifications



Missed call

8778167215

12:23 PM



New voicemail (1)

Dial *86

12:25 PM

Notifications

Quick Settings



Thu, Dec 29, 2011



4G LTE



2:02 PM

Verizon Wireless

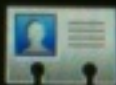
Clear



Phone



View event



People



Clock



Weather



Gauge Battery Widget

Voltage 4.038V, Temperature 27.3°C

2:02 PM

Notifications



Missed call

8778167215

1:59 PM



New voicemail (1)

Dial *86

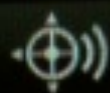
2:01 PM

Notifications

Quick Settings



Fri, Mar 30, 2012



9:40 AM

Verizon Wireless

Clear



Baseball
Dictionary



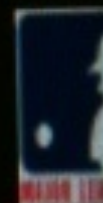
Shazam



People



Weather



MLB

48 Gauge Battery Widget

Voltage 3.756V, Temperature 28.3°C

9:40 AM

Notifications



Missed call

8005923429

9:02 AM